1968

# State of Utah, by and Through Its Attorney General, Phil L. Hansen v. Salt Lake City, Utah, A Municipal Corporation, by and Through Its Board of Commissioners, Mayor J. Bracken Lee, and Commissioners George B. Catmull, Louis E. Holley, Conrad B. Harrison, and James L. Barker; Its Chief of Police, Dewey Fillis; and/Or Its License Assessor, Thad Emery : Brief of Defendant-Respondent

# IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, by and through its ATTORNEY GENERAL, Phil L. Hansen,
Plaintiff-Appellant,

vs.

SALT LAKE CITY, UTAH, a municipal corporation, by and through its BOARD OF COMMISSIONERS, Mayor J. Bracken Lee, and Commissioners George B. Catmull, Louis E. Holley, Conrad B. Harrison, and James L. Barker, Jr.; its CHIEF OF POLICE, Dewey J. Fillis; and/or its LICENSE ASSESSOR, Thad Emery,
Defendant-Respondent.

Case No. 11047
(Consolidated with No. 11174

THE VAGABOND CLUB, et al.,
Plaintiff-Respondent,

vs.

SALT LAKE CITY, a municipal corporation, et al.,
Defendant-Appellant.

Case No. 11174
(Consolidated with No. 11047

**BRIEF OF DEFENDANT-RESPONDENT IN CASE NO. 11047**

**Appeal from Declaratory Judgment of the District Court of Salt Lake County, Utah
Honorable Aldon J. Anderson, Judge**

**BRIEF OF DEFENDANT-APPELLANT IN CASE NO. 11174**

**Appeal from Declaratory Judgment of the District Court of Salt Lake County, Utah
Honorable F. W. Keller, Judge**


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## NATURE OF THE CASE

The State of Utah is seeking a declaratory judgment and to enjoin Salt Lake City from the enforcement of the municipal ordinance which licenses and regulates

nonprofit social clubs, athletic and recreational associations. This case which has been consolidated with the case involving seven private clubs who filed an action against Salt Lake City to enjoin the enforcement of this same ordinance against them individually.

## DISPOSITION IN THE LOWER COURT

After the issuance of a temporary restraining order and preliminary injunction, the matter was tried before the Honorable Aldon J. Anderson of the Third Judicial District Court in and for Salt Lake County. After argument of counsel and briefs submitted on the law, Judge Anderson issued a memorandum decision which held that the ordinance was passed pursuant to a grant of power contained in Section 10-8-81, U.C.A. 1953 and that said statute was proper and constitutional. The court further found that Section 11-10-1, U.C.A. 1953 as amended by the 1967 Legislature extended to the city the right to license and regulate nonprofit corporations in addition to all others pertaining to the consumption of liquor. It further found that Section 10-8-42, U.C.A. 1953, and the grant of power contained therein and in co-application with the above two sections, gave to Salt Lake City the right to regulate liquor as long as the ordinance passed for that purpose was not prohibited by the Legislature or in conflict with the state liquor laws. The court concluded that the state had failed to meet the burden of establishing that defendants' ordinance was either in con-

travention of law or unconstitutional and, in any event, that the state is not a proper party to raise that question in this case.

The consolidated cases of the private clubs against Salt Lake City were filed in the Third Judicial District Court in and for Salt Lake County and a temporary restraining order and preliminary injunction was issued therefrom. That court asked that a Judge outside the jurisdiction be assigned to hear this matter and the case came on before Judge F. W. Keller on the 1st day of November, 1967, in his courtroom at Price, Utah, wherein argument of counsel was heard and a proper amount of time was allowed for counsel to prepare briefs in support of their arguments. On December 7, Judge Keller issued a declaratory judgment in which he found that the grant of power contained in Section 10-8-81, U.C.A. 1953, gave the city the right to regulate and license the clubs then before the court. Secondly, the court found that in eliminating the provisions from Section 11-10-1 excepting nonprofit corporations, the 1967 Legislature intended that the city have the right to license and regulate the liquor locker clubs as pertaining to the consumption of liquor. That pursuant to the grant of power given in Section 10-8-42, U.C.A. 1953, and as applied in conjunction with the above sections that Salt Lake City had the right to regulate liquor as long as the ordinance passed for that purpose was not specifically prohibited by the Legislature or in conflict with the state liquor laws. He denied the plaintiffs' contentions therein that Sec-

tion 11-10-1 through 4, U.C.A. 1953, as amended, was unconstitutional and held that the ordinance, Section 20-29-1 through 25, Revised Ordinances of Salt Lake City, Utah, 1965, was valid except for the provisions requiring that the chief of police be given a key to the premises of the clubs and that police officers may enter the club house without a search warrant. Thus requiring the officers to procure a proper search warrant prior to their inspecting the clubrooms or the premises.

## RELIEF SOUGHT ON APPEAL

The city desires that the decision of the Honorable Aldon J. Anderson be upheld in its entirety and that in the consolidated cases involving the private clubs that the decision of Judge Keller be upheld except for that portion which requires that police officers procure search warrants prior to inspection of the club, premises and seeks that that portion of the judgment be reversed thereby authorizing the peace officers to enter the clubs pursuant to the ordinance and that the club owners furnish a key or other device which will allow immediate access to the clubrooms.

## STATEMENT OF FACTS

The city enacted its ordinance on May 9, 1967, desiring to regulate and license all nonprofit clubs and associations, said ordinance to be effective one month

after its passage by the Salt Lake City Commission. The day before the ordinance was to become effective, the State of Utah through its Attorney General filed this action to enjoin the enforcement of said ordinance and declare the ordinance null and void.

Upon the decision of the Honorable Aldon J. Anderson, the Attorney General appealed to this honorable court for a temporary injunction staying the enforcement of said ordinance, said petition was denied. Immediately after such denial, the seven private clubs, (consolidaed case No. 11174,) filed an action to enjoin the enforcement of this ordinance as pertaining to them and for a declaration that said ordinance was improper and unconstitutional. All other clubs who come within the ordinance have been licensed by Salt Lake City's license assessor. A copy of the ordinance is repeated in its entirety in the record of case no. 11047 (R 25-27).

## ARGUMENT

### POINT I

### THE CITY HAS THE RIGHT TO LICENSE AND REGULATE SOCIAL, RECREATIONAL AND ATHLETIC CLUBS AND ASSOCIATIONS.

In the recent case of *Salt Lake City v. Town House thletic Club et al.,* 18 U.2d 417, 424 P.2d 442 (1967), this court clearly established the power of a municipal

corporation to license and regulate nonprofit social clubs and said:

> ". . . as presently granted by Section 10-8-81, Utah Code Annotated 1953, the city may license and regulate non-profit social clubs but it may do so only once."

The statute that gives to the municipality this authority reads as follows:

> "10-8-81. Social clubs and athletic associations—Regulation.—They may regulate all social clubs, recreational associations, athletic associations and kindred associations, whether incorporated or not, which maintain club rooms or regular meeting rooms within the corporate limits of the city."

In that case defendant's sole defense was based upon its allegation that the control of the nonprofit corporations organized as liquor locker clubs was vested solely in the Secretary of State. This control having been preempted by the state pursuant to Sections 16-6-13 through 15, Utah Code Annotated 1953, and Section 11-10-1, Utah Code Annotated 1953 (as then written). The court considered this matter fully and found:

> "The statutes cited above and relied upon by the clubs do not, except perhaps as regards the activities of storing and consuming liquor, remove from municipal corporations the power to license and regulate activities of non-profit social clubs, to the extent such power may have been delegated to them by other, though earlier, statutes. We do not here hold that, as regards

> the activity of storage and consumption of liquor, the regulatory power is in fact pre-empted to the State. That issue is not before us in this case."

There can be no doubt from the court's decision in the *Towne House* case and its interpretation of Section 10-8-81, U.C.A. 1953, that municipalities have the right to regulate and license social clubs, athletic and recreational associations located within the boundaries of said city.

The defendant heeding the instructions of this Court in the *Towne House* case then passed an all inclusive "one" ordinance covering the regulation of all activities of social clubs, athletic and recreational associations. (Section 20-29-1 to 25, Revised Ordinances of Salt Lake City, Utah, 1965, a copy of the ordinance being attached and made a part of plaintiff's complaint.)

The Attorney General in his brief filed in this matter in numerous passages has alluded to the fact that Salt Lake City's ordinance was written only to "persecute" liquor locker clubs which are situated within Salt Lake City. A very cursory reading of the ordinance in question would readily expose the fact that this ordiance is intended to apply to all social, recreational and athletic clubs of a nonprofit nature. Even the Ladies Literary Club, wherein no liquor consumption, storage or sale takes place is included and classified as a Class A club. All clubs are required to comply with the health, fire and such other regulations

as need be promulgated to protect the general welfare of the community as outlined in Sections 12, 13, 17, 18 and 19 of the ordinance.

The regulation of consumption of liquor and beer along with other activities were included. All regulatory licenses which had previously been purchased by the clubs and associations from defendant covering such things as dancing, beer consumption, restaurants, coin operated amusement and music devices and card tables, could no longer be issued because of the "Towne House" case decision.

The court did not decide if the city had the right to regulate and license these clubs for liquor consumption. This then is the issue before us in the present case.

## POINT II

## THE CITY HAS POWER TO CONTROL AND LICENSE CONSUMPTION OF LIQUOR IN ALL ESTABLISHMENTS INCLUDING PRIVATE CLUBS.

The 1959 Legislature expressly gave to the city the right to license and regulate the consumption of alcoholic beverages in all establishments except those nonprofit corporations which were organized under Section 16-6-13 through 13.3, U.C.A. and known as liquor locker clubs. The 1967 Legislature eliminated from Section 11-10-1, U.C.A. 1953, that part which

specifically excludes the liquor locker clubs. Our Supreme Court interpreted this section when it said:

> "Section 11-10-1, U.C.A. '53 enacted in 1959, delegates to cities the power to *regulate* 'all establishments, associations and corporations' except those covered by Section 16-6-13 to 13.3, U.C.A. 1953 (said exception since removed by 1967 Legislature) who 'operate a club, business or association which allows the customers, members or guests to possess or consume liquor on the premises, provided the license does not permit the licensee, operator or employee of either to hold, store or possess liquor or the premises' ". (Emphasis and explanation ours) ***Salt Lake City vs. Towne House Athletic Assoc.,*** op. cit.

By its elimination of the exception in the above law, the Legislature clearly intended that the local subdivision have power and control over the consumption of liquor in liquor locker clubs. There can be no doubt that the Legislature desired that the local governing bodies who are now charged with enforcement of the state liquor laws be empowered to exercise control over not only businesses and nonprofit organizations which are not corporations but also the liquor locker clubs.

It is the contention of the Attorney General that this statute is but a mandatory licensing provision for revenue purposes without any power to regulate the consumption of liquor (allegation #12 of the State's complaint). The power to license comes under either the police power or the taxing power. To help clarify

respondent's position, we quote from 33 *Am. Jur.*, Licenses, § 19:

> "The name given a license law by the legislature is not controlling, but in the last analysis, whether an imposition is in fact a tax or an aid to regulation is to be determined by the substance of the law imposing it. A license imposition upon a business or occupation which is not calling for police regulations is a revenue tax. However, a license enactment is a tax when, and only when, revenue is the main purpose for which it is imposed. In general, therefore, where the fee is imposed for the purpose of regulation, and the statute requires compliance with certain conditions in addition to the payment of the prescribed sum, such sum is a license proper, imposed by virtue of the police power; but where it is exacted soley for revenue purposes and its payment gives the right to carry on the business without any further conditions, it is a tax." 33 Am. Jur., Licenses, §19.

A look at the very basic nature of the thing to be licensed, liquor consumption, brings the conclusion that it comes strictly within the police power. There is no right either natural or constitutional within an individual or legal entity in the consumption or sale of liquor. *Randles v. Washington State Liquor Board,* 33Wash.2d 688, 206 P.2d 1209, 9 A.L.R.2d 531.

> "The manufacture or sale of intoxicating liquors, and even their possession or use, is not a matter of common, inherent, or natural right, but, if a right at all, is one held subject to the police power of the state." *Green Mountain*

*Post v. Liquor Control Board,* 117 Vt. 405, 94 A.2d 230, 35 A.L.R.2d 1060.

This court has reached the same decision in ***Riggins vs. District Court of Salt Lake County,*** 89 Utah 183, 51 P.2d 645 (1935).

In *Provo City vs. Provo Meat and Packing Co.,* 49 Utah 528, 165 Pac. 477, Ann. Cas. 1918 D 530, (1917), this court established that the right to regulate carries with it the right to license and impose a fee. The questoin now before the court is whether the right to license conversely carries with it the right to regulate. It is the position of respondent that it clearly has the power of regulation particularly when dealing with a subject which is so very clearly within the police power.

In taking a close look at the entire "set up law" itself, one finds that it is meant to be regulatory inasmuch as the subsequent sections 2 through 4 prescribe qualifications and requirements pertaining to the license and limits the amount of fee to be charged which indicates that it is a regulatory license and not for revenue only. If we, therefore, follow the general rule of statutory construction to consider the entire statute as a whole, we see that this statute conveys to the political subdivision the power to regulate the consumption of liquor.

## POINT III

## THE STATE HAS NOT PREEMPTED TO ITSELF THE CONTROL OF LIQUOR.

One will not find within the State Liquor Code Title 32, U.C.A.) an express or implied statement that the Legislature intended to preempt the control of liquor strictly to itself. This court has held that the Legislature must be clear in its expression of its intention to preempt to itself the regulation of any activity which may occur within the state. *Salt Lake City vs. Kusse,* 97 Utah 113, 93 P.2d 671 (1938).

The Attorney General spent innumerable pages in his brief outlining the history of liquor consumption statutes since the first pioneer entered the Great Salt Lake Valley. This history was very interesting but of no value in that the Legislature completely revised the statutes of the State of Utah in 1933. At that time the predecessors of Sections 10-8-81 and 10-8-42 were included in the new statutes clearly exhibiting an intention on the part of the Legislature to continue those powers and controls in the hands of the local and political subdivisions.

The State Liquor Code was passed by the following session in 1935. It could have clearly eliminated the effect of Section 10-8-42 and Section 10-8-81 by making a positive statement that the state desired to preempt to itself the regulation of intoxicating liquors but did not do so. We are, therefore, required to presume that the Legislature intended the local governing unit to continue to have such authority as expressed in these two sections.

Section 10-8-42, U.C.A. is as much in effect today as when it was originally passed. The cities are granted the power to prohibit "except as otherwise provided by law" any person from illegally possessing, using or selling intoxicating liquor.

There has been a general assumption that the Liquor Control Act of the State of Utah in Title 32, U.C.A. 1953, completely preempted the field of liquor regulation and control; this is not so. Our courts have never held that the state has preempted this field. On the contrary, they have held that where a general grant of power is given unless expressly prohibited, cities may pass concurrent ordinances and regulations covering the same area as the state statute so long as the local ordinance does not exceed the state law in its requirements.

> "Does Sec. 57-5-14, R.S.U. 1933, being of state-wide application and designed to prevent driving anywhere in the state while under the influence of intoxicating liquor, prevent the enactment of an ordinance preventing in the cities the same thing?
>
> "The solution of this question depends on the following principle: An ordinance dealing with the same subject as a statute is invalid only if prohibited by the statute or inconsistent therewith." (Cases cited). *Salt Lake City vs. Kusse,* 97 Utah 913, 93 P.2d 671, 1938.

In the case of *American Fork v. Charlier,* 43 Utah 231, 134 P. 739 (1913), this court considered a case involving local ordinances controlling intoxicating liquor.

"In view of the several provisions of the statutes we have quoted above, can any reasonable doubt exist in the mind of any one that the Legislature intended to and did convey ample power upon the municipalities of this state to pass ordinances prohibiting and punishing the sale or other disposition in any manner within the corporate jurisdiction of intoxicating liquors, and this may be done although the statutes of the state likewise prohibit and punish such sales and disposition? The overwhelming weight of authority in this country is to the effect that, where such power is conferred upon municipalities, they may prohibit and punish the same acts that are prohibited and punished by the state laws, and may impose the same penalties imposed by the state laws, if within the jurisdiction of the municipal courts. 2 McQuillin, Mun. Corps. §§877, 878; 28 Cyc. 696; Black on Int. Simmons, 4 Okla. Cr. 662, 112 Pac. 951; same case on rehearing, 5 Okla. Cr. 399, 115 Pac. 380, where the authorities upon the subject are reviewed in an exhaustive opinion. To the same effect is *Oklahoma City v. Spence* (Okla. Cr.) 126 Pac. 701."

There is some belief that *Riggins vs. District Court of Salt Lake County,* 89 Utah 183, 51 P.2d 645 (1935), holds the 1935 Utah Liquor Control Act completely preempted the field but when read in full context, it is readily discernible that the court was talking about the state's role of being in business, to-wit, selling intoxicating liquor through its own liquor stores. The court was not concerned with the question of regulation of consumption, but with protecting a state owned monopoly. We quote:

> "We are unable to perceive any constitutional objections to the state engaging in the sale and distribution of intoxicating liquors. The authority of the Legislature under its police power to regulate and prohibit traffic in intoxicating liquors is too well established to admit or debate. Notwithstanding the repeal of the prohibition clause of our State Constitution, the Legislature may entirely prohibit the manufacture, sale, and use of intoxicating liquor. No constitutional rights of the plaintiffs are infringed because the Legislature has seen fit to provide that the state shall occupy the entire field, or nearly so, of the sale and distribution of intoxicating liquors. Such in effect is the holding of this court in the case of Utah Manufacturers' Ass'n v. Stewart, 8 2Utah 198, 23 P.(2d) 229. Numerous authorities sustaining such legislative powers will be found collected in that case."

The court finally decided that the Liquor Commission had standing to sue in a civil action to enjoin various businesses from selling intoxicating liquor.

Procedurally, the duty falls upon the party attacking the ordinance to establish the invalidity of the ordinance in question.

> "It is a familiar rule of law that, where cities are given general power to pass an ordinance upon a given subject, the presumption prevails that ordinances passed upon that subject are valid until the contrary is made to appear and that the burden of showing their invalidity is upon the person assailing them. After alluding to this presumption the author of McQuillin's Mun. Ords. Sec. 384 says: 'Therefore, the gen-

eral rule is that, when the validity of an ordinance is called in question, the burden is upon the party who denies the validity to demonstrate it by proper proof, as where the question of the lack of power to enact is raised.' ". *Am. Fork vs. Charlier,* up. cit.

Under Section 10-8-42, U.C.A. 1953, defendant has received a general grant to regulate intoxicating liquor. The burden thus falls upon plaintiff to establish that the state enactments covering intoxicating liquors have expressly prohibited the local governing agencies from passing ordinances which regulate but do not circumvent the state laws. Therefore, until plaintiff firmly proves an express prohibition, the presumption of the validity of the ordinance now in question must prevail. This they have not done.

## POINT IV

## SALT LAKE CITY'S ORDINANCE LICENSING THE NONPROFIT SOCIAL CLUBS, ATHLETIC AND RECREATIONAL ASSOCIATIONS IS NOT UNCONSTITUTIONAL.

We can see from the foregoing arguments that the local governing body has been granted the authority to pass an ordinance licensing and regulating nonprofit clubs and associations. In considering the provisions of the ordinance being attached, this court in its right of judicial review must limit itself to the question of whether the requirements of the ordinance are unreason-

able and discriminatory beyond constitutional guarantee. This general rule of law is best stated in 33 Am. Jur., Licenses, Section 18:

> "Discretion of Legislature; Province of Courts. It is the province of the legislature to determine whether the conditions exist which warrant the exercise of the power to regulate or to license under the police power, but the question as to what are proper subject of its exercise is clearly a judicial one. In this respect, the legislature has a wise discretion in determining whether a business or occupation shall be barred to the dishonest or incompetent, and courts will not pass upon the question of the wisdom of the legislature in requiring a license from a certain class of persons to correct an extortionate practice found to exist on the part of such persons."

Inasmuch as appellant has attacked the ordinance section by section in the appendix to his brief, we will briefly review the main areas covered by the ordinance.

1. There are three classes of license under the ordinance. It is well settled law that the governing body may classify establishments or persons into various areas requiring a different fee to be paid so long as the discriminatory is not discriminatory or unreasonable. *Salt Lake City vs. Christensen Co.,* 34 U. 38, 95 P. 523, 17 A.L.R. (N.S.) 898; *Clark v. Titusville,* 184 U.S. 329, 22 S.Ct. 382, 46 L.Ed. 569; *Menlove v. Salt Lake County,* 18 U.2d 203, 418 P.2d 227; *Howe v. State Tax Commission,* 10 U.2d 362, 353 P.2d 468, and McQuillin, *Municipal Corporations,* 3rd Edi-

tion Revised, §26.60. These classes are completely reasonable as they are based on the activities of the licensee and all persons similarly situated are treated alike.

2. Sections 12, 13, 14, 16, 18 and 19 simply require that the clubs, regardless of their classification, abide laws of general acceptance in the field of health protection, fire protection and protection against violation of criminal laws. These requirements are reiterations of state enactments and are in no way additional burdens upon the clubs as they apply to all persons in society. Sections 1, 2, 4, 6, 8, 11, 15, 16, 21, 22, 23, 24 and 25 are administrative in character and simply deal with the application of other sections of the ordinance. Sections 5, 7 and 9 deal with the necessary information that must be included in the application for the license. They require identification of the responsible officers and directors of the club or association who change from year to year and the statement that in case of beer or liquor consumption, the officers and employees are abiding by state law. Furthermore, the contents of section 9 are taken from Section 16-6-13.1 which requires the posting of bylaws or house rules of a nonprofit corporation.

3. The requirement of filing a financial report with the application for license as indicated under section 7 and allowing the license assessor immediate access to the books of the club as stated in section 10 has been challenged by both the state and the private clubs. Inasmuch as we are dealing here with nonprofit organizations who are being licensed under a single

license and at a greatly reduced fee compared with the fees paid by a business who sponsor the same activities, it is of paramount interest that the city know whether the club is, in fact, organized as a nonprofit entity but in reality operating for pecuniary profit. By the requirement of filing a financial statement and allowing immediate access to the books, the city can ascertain whether it should assess the normal business license fee as required for all businesses similarly situated. It may, therefore, license each separate activity of the club if the club is, in fact, a business organization. The city must be allowed to look past the outward facade of a nonprofit organization to ascertain whether it is properly being regulated under the powers given by the state.

Because of the rather privileged position of the liquor locker club to store liquor on its premises, unscrupulous individuals may use a nonprofit organzation as a sham to avoid law enforcement. This type of action may be readily ascertained upon reading the financial statement and auditing the books. The State of Utah pays to Salt Lake City a portion of its liquor profits to enforce the liquor laws of this state, but now turns around and requires that law enforcement officers of the city be denied the means of discovering unscrupulous individuals who would by deception avoid such enforcement. Because the city is required to regulate social organizations differently than business organizations ,the governing body has the right to check into their internal affairs to ascertain any improprieties.

When dealing with liquor consumption, one must be cognizant that this is not a constitutional right given to any organization or individual but is a privilege given pursuant to the police power which has been delegated to respondent by the appellant.

## POINT V

## IN THE CONSOLIDATED CASES BROUGHT BY THE NONPROFIT CORPORATION CLUBS AGAINST SALT LAKE CITY, THE COURT DID ERR IN RULING THAT THE MUNICIPAL LAW ENFORCEMENT OFFICERS ARE REQUIRED TO PROCURE A PROPER SEARCH WARRANT PRIOR TO THEIR INSPECTING THE CLUB ROOM OF SUCH NONPROFIT CORPORATIONS.

Section 16-6-14 U.C.A. 1953, makes as a condition of the existence of these clubs the requirement that they allow immediate access to the peace officers of this state. In the court's memorandum decision, it held that it was not striking down this provision of state law. (R 7-9) It nevertheless required that local officers procure search warrants before entering the clubs for an inspection. These two findings are inconsistent.

The right to organize a liquor locker club is not a constitutional right but a privilege granted by the state subject to certain restraints and regulations as

contained in the enacting statutes. The nonprofit corporations who organize under the liquor locker club provisions have agreed to allow ready access to their premises by peace officers of the state, county and local governments.

Protection of a right can only apply when there is a right in existence. Because an individual has certain inalienable rights, it does not necessarily follow that organizations fall heir to these same rights simply because individuals are associated therewith. Again we must consider that no person or entity has any rights in the use, possession or storage of liquor except those given by the state pursuant to its police power.

When a group of people desire to organize a nonprofit liquor locker club and gain those privileges that are granted by the state, they must be willing to accept the conditions associated with such privileges. When plaintiffs agreed to the condition allowing unlimited access to their premises by peace officers, they have no rights which may be protected under the Fourth Amendment of the Constitution of the United States and Section 14 of Article I of the Constitution of the State of Utah.

To hold as the trial court did in this matter is to frustrate the very intention of the Legislature which passed the liquor locker club law. The Legislature obviously by its inclusion of Section 16-6-14 intended that the liquor laws not be frustrated by locked doors which could only be opened by keys or other devices held by

members of said club. The time delay effected by requiring the local enforcement officers to await the opening of said doors would give ample opportunity to unscrupulous individuals to eliminate all evidence of wrong doing and thus thwart the commands of the state liquor code and makes it almost impossible for the law enforcement officers to discover such violations.

## CONCLUSION

The trial courts who heard these two different cases did not err in holding that the city had the right and power to license social clubs, athletic and recreational associations and that they held the power to license and regulate these clubs in regards to their activities revolving around the consumption of liquor. Judge Aldon J. Anderson, after much study and research, being completely and properly advised when he made his decision, held that the State of Utah was not the proper party to challenge the constitutionality of the state statutes involved herein and of the ordinance being attacked. The trial court in Case No. 11174, when confronted with the actual parties to be regulated, fully upheld the city's position that the state had not preempted to itself regulation of nonprofit corporations operating as liquor locker clubs but did err in holding that local peace officers were required to obtain a search warrant before the club need allow them access to their premises. As a condition of their existence, these nonprofit private clubs agreed to immediate access by law enforcement

officers to the premises of the clubs. We feel from our foregoing argument that there can be no doubt that the holding of the trial courts be upheld except for that portion of Judge Keller's decision requiring our local enforcement officers to first procure a search warrant before investigation of private clubs.

Respectfully submitted,

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